

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)
)
 Plaintiff(s),) Case No. 05-CV-62-JHP-FJM
vs.)
)
 JEFFREY A. BRADLEY AND ROBERT L.)
MARTIN)
)
 Defendant(s).)

ORDER

Comes on for hearing the application of the Commodity Futures Trading Commission to Proceed with a Representative of Limited Authority (Dkt. #169) at the settlement conference currently set for November 14, 2006 at 1:30 p.m. The court has reviewed the briefs filed herein including the Response Brief filed on behalf of Defendant Martin. Plaintiff's application is hereby **GRANTED**.

The court is convinced that there is no one AT THIS STAGE OF THE PROCEEDING that has the capacity or knowledge to participate as settlement authority other than the counsel stated to appear at the settlement conference, James A. Garcia and Gretchen Lowe. It is the court's understanding that settlement recommendations from trial counsel are forwarded to the Director of the Division of Enforcement who makes a final recommendation to the staff of the Commissioners who review and present the recommendation to the Commission for approval. The court accepts in good faith trial counsel's representation that they are the parties with knowledge and authority, at this

stage of the case, to discuss all aspects of this case and negotiate in good faith its resolution.

All parties are directed to be familiar with *Schwartzman, Inc. V. ACF Industries, inc.*, 167 F.R.D. 694, 698 (D.N.M. 1996) and its dictates. Appropriate parties for settlement conferences involving governmental agencies are always problematic. Solutions should be fashioned appropriate to the case. Judge Mecham's language from *Schwartzman* captures this well (quoting the Advisory Committee Notes to Rule 16(c), 1993 Amendments.

"Particularly in litigation in which governmental agencies . . . are involved, there maybe no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility. It is not the rank of this representative which concerns the Court, but rather his or her authority to confront the dispute, in dialog with the parties, opposing counsel, and the Magistrate Judge, and to participate fully in the attempt to resolve it."

Schwartzman, 167 F.R.D. at 698-99, quoting Advisory Committee Notes to Rule 16(c), 1993 Amendments.

Dated this 5th day of October, 2006.



Sam A. Joyner
United States Magistrate Judge